

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	3:12-CR-175-(16)
)	
v.)	Sentencing
)	
WALTER HENRY JOHNSON)	January 15, 2013

BEFORE THE HONORABLE REED C. O'CONNOR
United States District Judge
In Wichita Falls, Texas

FOR THE GOVERNMENT:

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1 (January 15, 2013. Wichita Falls, Texas.)

2 THE COURT: Okay. I call case number 3:12-cr-175,
3 the United States versus Walter Henry Johnson.

4 MR. McCARTHY: Brandon McCarthy for the Government,
5 Your Honor.

6 THE COURT: Mr. McCarthy.

7 MR. RAFUSE: Robert Rafuse for the defendant.

8 THE COURT: Thank you, Mr. Rafuse. If you and your
9 client would, please, come to the podium.

10 Mr. Johnson, would you, please, acknowledge your
11 presence in court for the record by stating your full name.

12 THE DEFENDANT: Walter Henry Johnson, III.

13 THE COURT: Thank you, sir. You appeared before
14 Magistrate Judge Roach on August 22, 2012, and pleaded guilty
15 to count one of the one count indictment which charged you
16 with a violation of 21 U.S.C. § 846, conspiracy to distribute
17 a controlled substance.

18 On that date he found that your plea of guilty was a
19 knowing and voluntary plea supported by an independent basis
20 in fact containing each of the essential elements of this
21 offense. You told him at that time that you understood the
22 accuracy -- I'm sorry -- You told him at that time you
23 understood the elements of the Factual Resume, you agreed to
24 the accuracy of the Factual Resume, and admitted that you
25 committed all of the essential elements of this offense. He

1 recommended that I find you guilty and I accepted that
2 recommendation. Your plea of guilty was taken pursuant to a
3 plea agreement and I've reviewed the plea agreement and the
4 charge to which you've pled guilty and I've determined that
5 the charge adequately reflects the seriousness of your actual
6 offense behavior. Therefore, your plea agreement is accepted.

7 Mr. Rafuse, did you and your client receive in a
8 timely manner a copy of the Presentence Investigation Report?

9 MR. RAFUSE: Yes, Your Honor.

10 THE COURT: And did you carefully review that
11 document with your client?

12 MR. RAFUSE: Yes, Your Honor.

13 THE COURT: Did you also receive a copy of the
14 Addendum to the Presentence Report?

15 MR. RAFUSE: Yes.

16 THE COURT: Did the Government receive this document
17 timely?

18 MR. McCARTHY: Yes, Your Honor.

19 THE COURT: Now, there's no 5K filed in this --

20 MR. McCARTHY: That's correct, Your Honor.

21 THE COURT: And why is that?

22 MR. McCARTHY: There was -- it was offered and
23 rejected, Your Honor.

24 THE COURT: You offered it?

25 MR. McCARTHY: Yes.

1 **THE COURT:** And it was rejected?

2 **MR. McCARTHY:** Yes.

3 **THE COURT:** Is that true, Mr. Rafuse?

4 **MR. RAFUSE:** That's correct, Your Honor.

5 **THE COURT:** And do you -- did you spend time with
6 your client and did you inform your client about the offer
7 from the Government?

8 **MR. RAFUSE:** Yes, Your Honor.

9 **THE COURT:** And did you explain to your client the
10 benefits of the Government's offer?

11 **MR. RAFUSE:** Yes, Your Honor.

12 **THE COURT:** So, does your client understand that by
13 rejecting the Government's offer he will receive substantially
14 more prison time than he otherwise would receive. Did you go
15 over that with him?

16 **MR. RAFUSE:** Yes, sir.

17 **THE COURT:** And do you feel confident that you
18 explained to him the consequences, the negative consequences,
19 of his rejection of the Government's offer?

20 **MR. RAFUSE:** Yes, Your Honor. In addition to that,
21 he has seen some of the sentences that have come down for some
22 of the codefendants. He is well aware of the benefits had he
23 accepted the State's offer -- the Government's offer. He
24 still has decided not to accept that offer.

25 **THE COURT:** Mr. Johnson, is that true, sir?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And so you understand that by rejecting
3 the Government's offer you will receive substantially more
4 prison time than you otherwise would have received.

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** That is, you will be locked up in prison
7 away from your family and friends for several years longer
8 than you otherwise would have.

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And is that the way you wish to proceed?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you wish to spend any more time
13 talking to Mr. Rafuse about this decision?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** Do you feel as if Mr. Rafuse has candidly
16 and honestly answered any and all questions you had as it
17 relates to this decision?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. Very good. Then are there any
20 objections, Mr. Rafuse, that you believe we should take up
21 that affects your client's sentencing in this case?

22 **MR. RAFUSE:** None that affects sentencing, Your
23 Honor. I filed a statement in response to the Presentence
24 Report making some corrections on typographical errors and
25 factual errors.

1 **THE COURT:** Okay.

2 **MR. RAFUSE:** And the Addendum has basically accepted
3 all of those statements except for one regarding the
4 biological child issue.

5 **THE COURT:** Very good. I will not consider any of
6 the remaining disputed matters in determining the appropriate
7 sentence in this case.

8 I adopt the fact findings contained in the
9 Presentence Report as clarified by the Addendum and as
10 mentioned by Mr. Rafuse in his statement.

11 I'll adopt the Probation Officer's conclusions as set
12 forth in the Presentence Report as to the appropriate
13 Guideline calculations and determine that they are as follows:

14 A total offense level of 26. A Criminal History
15 Category of III. A Guideline provision of 120 months. A
16 supervised release range of between 5 years and life. A fine
17 range of between \$12,500 and \$10 million dollars. And a
18 special assessment of \$100.

19 Does the Government wish to be heard on sentencing?

20 **MR. McCARTHY:** No, Your Honor.

21 **THE COURT:** Mr. Rafuse, I'll turn the floor over to
22 you, sir.

23 **MR. RAFUSE:** All right. Your Honor, the defendant
24 would call Sandra Davis to the stand.

25 **THE COURT:** Please come up, ma'am. Mr. Johnson, if

1 you would have a seat, please, sir.

2 Would you raise your hand to be sworn, please.

3 (Witness sworn by the clerk at this time.)

4 SANDRA DAVIS, DEFENSE WITNESS, was sworn

5 DIRECT EXAMINATION

6 BY MR. RAFUSE:

7 Q. State your name.

8 A. Sandra Davis.

9 Q. And are you related to the defendant in this case, Walter
10 Johnson?

11 A. Yes, I am.

12 Q. How are you related?

13 A. I'm his aunt.

14 Q. You have an opportunity to give a statement to the Court.
15 You may begin now.

16 A. I just want to say that Walter is really a good person
17 and, yes, he did make a mistake, but I feel that he shouldn't
18 have to be gone that long away from his family. He has
19 children and I just don't feel that -- if he's -- he's a very
20 good person. Yes, he's a very good person and he needs to be
21 home with his family.

22 MR. RAFUSE: All right. That's all I have. Pass the
23 witness.

24 THE COURT: Thank you.

25 MR. McCARTHY: No questions, Your Honor.

1 THE COURT: Okay, ma'am. Thank you. Mr. Rafuse.

2 MR. RAFUSE: The defendant calls Cheryl Davis.

3 THE COURT: Would you raise your hand to be sworn,
4 please, ma'am.

5 (Witness sworn by clerk.)

6 CHERYL DAVIS, DEFENSE WITNESS, was sworn

7 DIRECT EXAMINATION

8 BY MR. RAFUSE:

9 Q. State your name.

10 A. Cheryl Davis.

11 Q. You're related to the defendant, Walter Johnson?

12 A. Yes, I am.

13 Q. In what manner?

14 A. I'm his mother.

15 Q. You have an opportunity to give a statement to the Court.
16 You may begin now, ma'am.

17 A. Judge, I know my son has made mistakes, but my son is a
18 good child and I pray, Lord, that you would be lenient with my
19 child. He has children. He has a sick father. And I need --
20 we need him home. We are a praying family and we believe in
21 God and my faith is in God and I know that God overrules
22 everything and I just pray that you would give my child a
23 second chance, even though he's made mistakes. He's a good
24 person and that I know that he has learned from his mistake,
25 but everybody's not perfect, so I'm praying that you would be

1 lenient with my child, please.

2 THE COURT: Have you talked to your son about
3 rejecting the Government's offer and that --

4 THE WITNESS: I don't think he understands the -- I
5 mean, he's -- as I've been visiting him over the six months,
6 he's not understanding the system. He is not understanding
7 about his time.

8 THE COURT: Well, he just told me --

9 THE WITNESS: I mean, he's confused --

10 THE COURT: Hold on. He just told me he did. I told
11 him that by rejecting the Government's offer he will receive
12 substantially more prison time than he otherwise would receive
13 and I asked him if he understood that and he said he did. So,
14 why are you saying that he does not understand it?

15 THE WITNESS: Because in my visits with him. I mean,
16 he's -- he's confused on the -- like on the paper said 6 to 8
17 and then he was saying that his lawyer was telling him to sign
18 for 10 and I was saying, well, I will call Robert and -- his
19 lawyer's attorney and I will ask him, well, why is it that his
20 paper is saying the Guidelines are from 6 to 8 years but then
21 you all wanted him to sign for 10. I mean, you know, a -- he
22 was -- Excuse me -- he was stating to me that he could --

23 THE COURT: Who was stating?

24 THE WITNESS: Mr. Roberts, his attorney. That if he
25 would sign -- I mean if we would sign -- if we would sign for

1 10 he would receive no more than 10.

2 THE COURT: The law says he faces a mandatory minimum
3 sentence of 10 years.

4 THE WITNESS: Yes, sir.

5 THE COURT: But the Government has offered him a way
6 to get less than 10 years, somewhere around the Guideline
7 range, thereabouts.

8 THE WITNESS: Yes, sir.

9 THE COURT: And Mr. Johnson says he doesn't want to
10 take the Government's offer. That's what he just told us.
11 And it's not that complicated.

12 THE WITNESS: I don't --

13 THE COURT: It's not that complicated at all, really.
14 So, I'm not sure I understand what the confusion is. The law
15 is -- the law is -- for this crime the law says that anyone
16 convicted of this crime gets a mandatory minimum of 10 years,
17 not one day less than 10 years, and it could go higher but not
18 in this case. But 10 years. And then Mr. Rafuse and the
19 Government have talked and they've reached an agreement
20 whereby they'll -- if your son would agree -- they'll provide
21 him an opportunity to get less than 10 years and he's
22 rejecting that. So, do you understand what I'm saying?

23 THE WITNESS: Yes, but --

24 THE COURT: I'll ask him again.

25 THE WITNESS: Thank you.

1 **THE COURT:** Okay. Thank you, ma'am.

2 **MR. RAFUSE:** The defendant would like to give a
3 statement to the Court.

4 **THE COURT:** Okay. Come on up, Mr. Johnson.
5 Mr. Johnson, are you confused?

6 **THE DEFENDANT:** A little bit.

7 **THE COURT:** Tell me what you're confused by. I just
8 told your mom that the law says that -- and you were told this
9 at your arraignment -- that the punishment for this particular
10 crime is a mandatory minimum of 10 years, 120 months in
11 prison. That's what the law says. Not one day less than 120
12 months.

13 Now, Mr. McCarthy told me a moment ago and Mr. Rafuse
14 confirmed this, that Mr. McCarthy had offered you an
15 opportunity to get less than that. He doesn't have to, but he
16 has offered you've an opportunity to do that. You told me you
17 talked to Mr. Rafuse about that and you told me that you told
18 Mr. Rafuse that you did not want to do that. So, you tell me
19 what you're confused about.

20 **THE DEFENDANT:** I don't know what the offer is
21 really -- what the offer really is. I don't know what that
22 is.

23 **THE COURT:** Well, the offer is for you to sit down
24 and cooperate with the Government. That's the offer. Did
25 Mr. Rafuse not tell you that, that you had to talk to the

1 Government and provide information to the Government? Did he
2 not tell you that?

3 THE DEFENDANT: Yes.

4 THE COURT: Yes what?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: No, yes did he tell you that or yes he
7 didn't tell you that?

8 THE DEFENDANT: Yes, he did, sir.

9 THE COURT: Well, what do you not understand?

10 THE DEFENDANT: This is my first time in trouble like
11 this so I really just -- you know, I'm confused about it.

12 THE COURT: All right. Well, do you need more time
13 to talk to Mr. Rafuse or do you want to go forward?

14 THE DEFENDANT: I want to go forward.

15 THE COURT: Okay. So, you don't want to find -- you
16 don't want to clear up your confusion?

17 THE DEFENDANT: No.

18 THE COURT: Why do you not want to clear up your
19 confusion?

20 THE WITNESS CHERYL DAVIS: Excuse me --

21 THE COURT: No. Sit down, please. Why do you not
22 want to clear up your confusion, Mr. Johnson?

23 THE DEFENDANT: I'm ready to get this over with.

24 THE COURT: Well, I can't -- I can't let you get it
25 over with if you don't understand what's happening. Do you

1 think that's the right way to proceed is to let you get it
2 over with even though you do not understand what is happening?

3 **THE DEFENDANT:** No, but --

4 **THE COURT:** All right. Let me just -- Let me just
5 explain this to you and then you tell me if you understand
6 what I'm saying or you don't understand what I'm saying.

7 Do you understand that the range of punishment for
8 your offense begins at a minimum of 10 years in prison? Do
9 you understand that?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** All right. And do you understand that on
12 the paper, Presentence Report, when they calculate the
13 Guidelines, the Guideline range for the amount of drugs you
14 had, criminal history you have, when they calculate that, it's
15 less than 10 years. Do you understand that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Now, do you understand that the law says
18 it doesn't matter what the Guidelines say, when the statute
19 says 10 years, you get 10 years, not a day less than 10 years,
20 even if your Guidelines say less than that. Do you understand
21 that?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Okay. And that's the situation you find
24 yourself in. Do you understand that?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** That your Guidelines say less than 10
2 years. Do you understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Okay. Now, the only way, the only way
5 for you to get less than 10 years in this case is for you to
6 work with Mr. McCarthy and for him to authorize you to get
7 less than 10 years. I don't know if he will or not. Sounds
8 as if he has made that offer to you, so the ball is in your
9 court. Do you understand that?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** And the offer is for you to meet with
12 Mr. McCarthy or his designee, his agent or whomever, and for
13 them to talk to and for you to talk to them and for you to do
14 it honestly. Do you understand that's the offer?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** And that, depending upon the results of
17 that meeting, he may be in a position to authorize me to
18 sentence you to less than 10 years. I mean, you just heard
19 your mom and your other witness get up here and ask for
20 leniency. You understand I have no leniency. There's no
21 leniency I can give to you under the law. The law says, as
22 you stand here today, you get 10 years in prison, period. No
23 more real discussion.

24 But the only way for you to get less than 10 years,
25 the only way for me to have any ability to give you any

1 leniency is for you to meet with Mr. McCarthy. Do you
2 understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** Do you have any questions at all? Are
5 you confused about anything that I've said?

6 **THE DEFENDANT:** No.

7 **THE COURT:** Okay. I'm going to reset your
8 sentencing. I'm going to give you a chance to talk to
9 Mr. Rafuse and -- again, you don't -- you've already rejected
10 Mr. McCarthy's offer. You don't have to. I'm not forcing you
11 to do this at all. It's your decision. You are old enough to
12 make your decisions that affect your life and if you want to
13 reject it, I'm -- I'm ready to go forward just like you're
14 ready to go forward, but I can't go forward if you have been
15 laboring under confusion to this point and now that I've
16 cleared it up for you I don't feel that it is appropriate to
17 go forward today without giving you a chance to think about it
18 and to talk to Mr. Rafuse about your situation.

19 Do you understand?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Okay. Do you have any questions at all
22 from me at this time that I can clear up, because I -- we're
23 here and there's no reason for you to go back until you fully
24 understand the situation you find yourself in today. And I'm
25 happy to spend whatever time it takes to try to get you to get

1 the information you need to understand.

2 Do you have any questions at all from me? You have
3 no questions at all?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** Okay. Then we will reset this case.
6 Mr. Rafuse, I'll need you to file a notice on the docket after
7 you've had time to confer with your client and/or
8 Mr. McCarthy, if necessary, that would notify me that it's
9 time to set a new sentencing date.

10 **MR. RAFUSE:** Your Honor, if in the event he does
11 change his mind, will I be permitted to file an amended
12 sentencing memorandum?

13 **THE COURT:** Well, yes, but I -- I wouldn't file it.
14 I would wait until -- because, really, there's nothing for
15 you -- it really depends on Mr. McCarthy, more than anything
16 else. But you can file whatever you want in advance, sure.

17 **MR. RAFUSE:** Thank you, Your Honor.

18 **THE COURT:** Okay. Then we're in recess on this case.
19 And, Mr. Johnson, I want you to -- if you have any questions
20 at all, you tell Mr. Rafuse you need more explanation until
21 you fully understand. Do you understand?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Okay. Thank you, sir. Good luck to you.
24 (Recess.)

25 **THE COURT:** Okay. I will re-call case number

1 3:12-cr-175, United States Walter Henry Johnson.

2 MR. McCARTHY: Brandon McCarthy for the Government,
3 Your Honor.

4 THE COURT: Okay. Thank you, Mr. McCarthy.
5 Mr. Rafuse is here for Mr. Johnson. Are you ready,
6 Mr. Rafuse?

7 MR. RAFUSE: We're ready, Your Honor.

8 THE COURT: Okay. Very good. If you and your client
9 will please come to the podium.

10 Mr. Johnson, we recess earlier today to give you time
11 to talk to Mr. Rafuse and to -- for him to provide you any
12 information that you may need to fully understand what it is
13 or where you find yourself and what it is that the Government
14 has offered you in terms of going forward and in -- in terms
15 of you -- your -- determining a sentence for you. Do you
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand now what the Government
19 was offering?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. And you do not wish -- it's my
22 understanding you do not wish to meet with the Government and
23 take them up on their offer. Is that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You wish to go forward today?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you understand that by going forward
3 today and not working with the Government you face a mandatory
4 sentence of at least 120 months which comes out --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- to 10 years.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand I have no authority to
11 sentence you to any time less than 120 months?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And your sentence will be up there
14 towards the high -- the 120 months will be up there with
15 people with far more background and criminal history and that
16 sort of thing than you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that's what you ambitious to do
19 today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Very good then. You appeared
22 before Magistrate Judge Roach on August 22, 2012, and pleaded
23 guilty to count one of the one count indictment charging you
24 with a violation of Title 21 you, United States Code, Section
25 846. On that date he found that your plea of guilty was a

1 knowing and voluntary plea supported by an independent basis
2 in fact containing I'm of the essential elements of this
3 offense. You told him at that time that you understood the
4 elements, agreed to the accuracy of the Factual Resume, and
5 admitted that you committed all of the essential elements of
6 this offense.

7 He recommended that I find you guilty and I accepted
8 his recommendation. Your plea was taken pursuant to a plea
9 agreement and hitch reviewed that document and have determined
10 that it should be accepted. Therefore, it is accepted and
11 your judgment and sentence will be consistent with it.

12 Mr. Rafuse, did you and your client receive in a
13 timely manner a copy of the Presentence Investigation Report?

14 MR. RAFUSE: Yes, Your Honor.

15 THE COURT: And did you carefully review that
16 document with your client?

17 MR. RAFUSE: Yes.

18 THE COURT: And the Government received it timely?

19 MR. McCARTHY: Yes, sir, Your Honor.

20 THE COURT: And there are no objections that we need
21 to take up that affect sentencing in this matter. Is that
22 right?

23 MR. RAFUSE: That's right, Your Honor. No objection.

24 MR. McCARTHY: No objections.

25 THE COURT: In that case, I will adopt the fact

1 findings contained in the Presentence Report and the Addendum.
2 I adopt the Probation Officer's conclusions set forth in the
3 Presentence Report as to the appropriate Guideline
4 calculations and determine they are as follows:

5 A total offense level of 26, a Criminal History
6 Category of III. A custody range of 120 months. A supervised
7 release range of between 5 years and life. A fine range of
8 between \$12,500 and \$10 million dollars. And a mandatory
9 special assessment of \$100.

10 Does the Government wish to be heard to sentencing?

11 **MR. McCARTHY:** No, Your Honor.

12 **THE COURT:** Mr. Rafuse?

13 **MR. RAFUSE:** Your Honor, two witnesses previously
14 testified. Mr. Johnson wants to give a brief statement to the
15 court as well.

16 **THE COURT:** Very good. Mr. Johnson, do you wish to
17 speak on your behalf or present any information in mitigation
18 of your sentence?

19 **THE DEFENDANT:** Yes, sir. I would just like to tell
20 my family that I'm sorry by putting them through all this pain
21 and stuff like that, you know. I have no further more to say.

22 **THE COURT:** Okay. Thank you, Mr. Johnson.

23 I will now state the sentence determined pursuant to
24 Title 18 U.S.C. 3553 treating the Sentencing Guidelines as
25 advisory only. In arriving at a reasonable sentence, I've

1 taken into account primarily the conduct admitted in Factual
2 Resume as well as those matters required to be considered by
3 3553.

4 The attorneys will have a final chance to make legal
5 objections before sentence is finally imposed.

6 It is the judgment of the Court that the defendant,
7 Walter Henry Johnson, is hereby committed to the custody of
8 the Federal Bureau of Prisons for a period of 120 months.

9 I do not order a fine. It is ordered that he pay a
10 mandatory special assessment of \$100.

11 It is ordered that upon his release from prison he be
12 placed on supervised release for a term of 5 years.

13 It is further ordered that upon his release from
14 prison he be placed -- he comply with the standard conditions
15 and contained in this judgment and comply the mandatory and
16 special conditions stated herein.

17 He shall not commit another federal state or local
18 crime.

19 He shall not illegally possess controlled substances.

20 He shall cooperate in the collection of DNA as
21 directed by the Probation Officer.

22 He shall not possess a firearm, ammunition,
23 destructive device, or any other dangerous weapon.

24 He shall report in person to the probation office in
25 the district to which he is released from the custody of the

1 Federal Bureau of Prisons within 72 hours of release.

2 He shall refrain from any unlawful use of a
3 controlled substance.

4 He shall submit to one drug test within 15 days of
5 release from prison and at least two periodic drug tests
6 thereafter as directed by the Probation Officer.

7 He shall provide to the Probation Officer any
8 requested financial information.

9 He shall participate in work force development
10 programs and services involving activities relating to
11 occupational and a career development including, but not
12 limited to, assessments and testing, educational instruction,
13 training classes, career guidance, counseling, case
14 management, and job search and retention services as directed
15 by the Probation Officer until successfully discharged from
16 the program.

17 He shall participate in a program approved by the
18 probation office for the treatment of narcotic drug and
19 alcohol dependency which will include the testing for the
20 detection of substance use or abuse.

21 He shall abstain from the use of alcohol and/or all
22 other intoxicants during and after completion of treatment.

23 He shall participate in mental health treatment
24 services as directed by the Probation Officer until
25 successfully discharged. These services may include

1 medications prescribed by a licensed physician.

2 He shall participate in a domestic violence treatment
3 program, i.e. battered intervention program and anger
4 management program as directed by the Probation Officer until
5 successfully discharged. He shall contribute to the cost of
6 services rendered at a rate of at least 5 per month.

7 He shall make all court ordered child support
8 payments on a timely basis, producing prove of payment to
9 Probation Officer within the first 5 days of each month
10 whether as part of a written report required by the Probation
11 Officer or otherwise.

12 I've now -- I believe this is the appropriate
13 sentence, given all the fact and circumstances, and this
14 sentence is sufficient but not greater than necessary to
15 comply with the statutory purposes of sentencing

16 I've now stated the sentence. Is there any reason
17 from the Government why that sentence should not be imposed?

18 **MR. McCARTHY:** No, Your Honor.

19 **THE COURT:** From the defendant?

20 **MR. RAFUSE:** No, Your Honor.

21 **THE COURT:** Then I will order it imposed as stated.

22 Now, Mr. Johnson, to the extent you have the right to
23 appeal, you do have the right to apply for leave to appeal in
24 forma pauperis if you are unable to pay the cost of an appeal
25 and if you decide to appeal your notice of appeal must be

1 filed within 14 days.

2 Please talk Mr. Rafuse about your appellate rights
3 and he will give you his best professional judgment on how you
4 should proceed in this regard.

5 Is there anything else we should take up from the
6 Government?

7 **MR. McCARTHY:** No, Your Honor.

8 **THE COURT:** From the defense?

9 **MR. RAFUSE:** Your Honor, he would request to be
10 confined near the Houston area where his father is living.

11 **THE COURT:** Okay. I will make that recommendation.
12 Mr. Johnson, I'll recommend that to the Bureau of Prisons but
13 they don't have to follow my recommendation if they choose not
14 to confine you there, that there's nothing anyone can do about
15 it, but I will make that recommendation.

16 **THE DEFENDANT:** Thank you, sir.

17 **THE COURT:** Anything further?

18 **MR. RAFUSE:** Nothing further, Your Honor.

19 **THE COURT:** We are in recess on this case. Thank you
20 all for being here.

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1 I, **DENVER B. RODEN**, United States Court Reporter for the
2 United States District Court in and for the Northern District
3 of Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 **WITNESS MY HAND** on this 13th day of March, 2013.

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8
9 /s/ Denver B. Roden

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